



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

**FILED**

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**C2211005**

Olivenhain Municipal Water District,

Complainant,

vs.

San Diego Gas & Electric Company (U902E),

Defendant.

**Case**

Complaint  
(Rule 4.2)

COMPLAINANT	DEFENDANT
<p>Olivenhain Municipal Water District Attn: Michael Kerkorian, Representative of Complainant Utility Cost Management LLC 1100 W. Shaw Avenue Suite 126 Fresno, CA 93711 T:559-261-9230 E-mail: <a href="mailto:mk@utilitycostmanagement.com">mk@utilitycostmanagement.com</a></p>	<p>San Diego Gas &amp; Electric Company (U902E) Attn: Greg Anderson, Regulatory Tariff Manager 8330 Century Park Court, CP32F San Diego CA 92123 T: 858-654-1717 E-mail 1: <a href="mailto:ganderson@sdge.com">ganderson@sdge.com</a> E-mail 2: <a href="mailto:cfaber@semprautilities.com">cfaber@semprautilities.com</a></p>

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

OLIVENHAIN MUNICIPAL WATER  
DISTRICT;

Complainant,

v.

SAN DIEGO GAS & ELECTRIC  
COMPANY (U902G),

Defendant.

Complaint No. \_\_\_\_\_

(Filed October 26, 2022)

**COMPLAINT**

Representative of Complainant:

Michael Kerkorian  
UTILITY COST MANAGEMENT LLC  
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October 26, 2022

## **I. Facts**

The complainant in this case is the Olivenhain Municipal Water District (“OMWD”). OMWD owns and operates the David C. McCollom Water Treatment Plant (“WTP”) at 19090 Via Ambiente in the City of Escondido. The WTP processes up to 34 million gallons of raw water per day, and generates electricity through a 746-kilowatt hydroelectric system that meets part of the plant’s power needs. The WTP electricity generation is operated in parallel with the San Diego Gas & Electric Company (“SDG&E”) distribution system.

On July 19, 2013, SDG&E sent a letter to OMWD General Manager Kimberly Thorner regarding the WTP that stated “the Project has met all of the requirements to interconnect and operate in parallel with SDG&E’s electric system effective immediately”. From that date through February 1, 2022, SDG&E billed the WTP on rate schedule “AL-TOU”, and included “standby charges” exceeding \$150,000 per year pursuant to the terms of “Schedule S – Standby Service”.

On March 9, 2021, OMWD notified SDG&E<sup>1</sup> that the imposition of standby charges to the WTP account violated SDG&E’s tariffs and requested that SDG&E immediately stop assessing standby charges and issue a refund of standby charges that had been charged during the prior three years. In the months after OMWD’s notification, SDG&E and OMWD held several meetings in which SDG&E provided contradictory information regarding its view of OMWD’s NEM eligibility.<sup>2</sup> Finally, in late June 2021, SDG&E acknowledged that the WTP was in fact eligible for NEM, but insisted that it would not eliminate standby charges from OMWD’s bill until OMWD had obtained a certificate from the Western Renewable Energy

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<sup>1</sup> OMWD’s notification was sent via email from OMWD’s authorized representative Beth Rogers of Utility Cost Management LLC to SDG&E’s Christopher Nanson and Roque Camacho.

<sup>2</sup> During the Spring of 2021, SDG&E repeatedly insisted that OMWD was not eligible for NEM because its 2013 interconnection agreement with SDG&E was for “Inadvertent Export”, which was a “non-NEM” agreement. OMWD replied that the interconnection agreement did not preclude NEM eligibility, and SDG&E eventually agreed, but only after months of insisting otherwise.

Generation Information System (WREGIS) and, after that, a Renewables Portfolio Standard certificate from the California Energy Commission (CEC).

OMWD disagreed with SDG&E's position because it saw no regulatory support for the idea that the WREGIS and CEC certificates had to be obtained to establish eligibility for NEM, and asked SDG&E to cite regulations supporting its view. SDG&E has never responded to OMWD's requests to provide this supporting documentation.<sup>3</sup>

Despite its belief that the WREGIS and CEC certificates were unnecessary, in an effort to have the standby charges removed as quickly as possible, OMWD contacted WREGIS in July 2021 to get the certification process started, and by November 2021 had received both certificates. OMWD then went back to SDG&E, and finally in April 2022 the standby charges were removed from the WTP account for service beginning February 1, 2022.

Since April 2022, OMWD has continued to discuss with SDG&E its request for a refund of standby charges that were billed for service prior to February 1, 2022, but SDG&E has refused OMWD's request.<sup>4</sup> By this Complaint, OMWD seeks a Commission order requiring that SDG&E pay a refund to OMWD for standby charges that have been billed to the WTP, plus prejudgment interest on the refund amount.

## **II. Legal and Factual Basis for OMWD's Claim**

In addition to electricity charges incurred on SDG&E "Schedule AL-TOU General Service – Time Metered", the WTP is assessed standby charges on "Schedule S – Standby Service". The standby charges are inappropriate because the WTP has been eligible for "Net Energy Metering" ("NEM") since service began, and Schedule S states that "Customers that are eligible for service under Schedule NEM, Schedule NEM-BIO, and NEM-FC are exempt

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<sup>3</sup> OMWD has continued to request this regulatory support for SDG&E's position through inquiries to SDG&E, the most recent of which occurred in September 2022.

<sup>4</sup> The latest communication between SDG&E and OMWD regarding this issue was a September 14, 2022 email from SDG&E Senior Customer Policy & Compliance Advisor Adrianna Magallanes-Chacon to OMWD representative Michael Kerkorian.

from taking service under this Schedule to standby for the generator(s) that make the customer eligible for Net Energy Metering”.<sup>5</sup>

The “Applicability” section of Schedule NEM<sup>6</sup> makes clear the requirements that must be met for a SDG&E customer to be “eligible for” NEM:

Pursuant to California Public Utilities Code (PU Code) Section 2827, this schedule is applicable to a residential, small commercial (as defined in subdivision (h) of Section 331 of the PU Code), commercial, industrial, or agricultural customer who uses a Renewable Electrical Generation facility, as defined in Special Condition (SC) 1.b, or a combination of those facilities, with a total capacity of not more than 1,000 kilowatts (kW) (also referenced herein as 1 megawatt [MW]) that is located on the customer’s owned, leased, or rented premises, is interconnected and operates in parallel with the Utility’s transmission and distribution systems, and is intended primarily to offset part or all of the customer’s own electrical requirements (hereinafter “eligible customer-generator” or “customer”).

The WTP has met these criteria since 2013 when the 746-kW hydroelectric system began operating, and therefore has been “eligible for” NEM, and exempt from standby charges, during this time.

As noted above, SDG&E Schedule NEM is based on Public Utilities Code Section 2827, which was enacted in 1995. In fact, the Schedule NEM Applicability language is taken directly from, and is nearly identical to, the Public Utilities Code Section 2827(b)(4)(A) definition of “eligible customer generator”. Just as the WTP meets the Schedule NEM criteria to be “eligible for” NEM, it also fulfills those same requirements to be an “eligible customer generator” under the Public Utilities Code.

In Section 2827(g), the Public Utilities Code unequivocally states why the WTP, as an “eligible customer generator”, should never have been billed for standby charges by SDG&E:

... eligible customer-generators shall not be assessed standby charges on the electrical generating capacity of the kilowatt-hour production of a renewable electrical

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<sup>5</sup> Sheet 2 of SDG&E Schedule S, under the heading “Exemption” (CPUC Sheet No. 18256-E).

<sup>6</sup> Schedule NEM was in effect when the WTP initiated service in parallel with SDG&E’s distribution system in July 2013. NEM customers initiating service after July 1, 2017 are served under the NEM “successor tariff”, Schedule NEM-ST.

generation facility... Any new or additional demand charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or any other charge that would increase an eligible customer-generator's costs beyond those of other customers who are not eligible customer-generators in the rate class to which the eligible customer-generator would otherwise be assigned if the customer did not own, lease, rent, or otherwise operate a renewable electrical generation facility is contrary to the intent of this section...

Given the clear language of SDG&E Schedules S and NEM, and the language of Public Utilities Code Section 2827, the imposition of standby charges to the WTP is a "billing error", which is defined in SDG&E Rule 18.C as "an error by the Utility that results in incorrect billing charges to the customer". Under the terms of Rule 18.C.1, OMWD is entitled to a refund of standby charges for a period of three years prior to the date that SDG&E was notified of the error, which is back to March 9, 2018.

### **III. Issues to Be Considered**

There are three issues in this proceeding. First, is OMWD entitled to a refund of standby charges because the WTP was, and is, eligible for NEM and is an "eligible customer generator"? Second, what period should the refund cover? Third, is OMWD entitled to prejudgment interest on the refund amount?

### **IV. Relief Requested**

Complainant requests that the Commission order SDG&E to:

1. Pay OMWD a refund equal to the difference between (a) the amount that the WTP was charged for electricity service from March 9, 2018 (i.e., three years prior to OMWD's refund request) to February 1, 2022, and (b) the amount that would have been charged if standby charges were not assessed.
2. Pay OMWD prejudgment interest on such refund amount in an amount determined by the Commission.
3. Provide such other relief as the Commission deems appropriate.

**V. Information Required by Commission Rules**

This matter has not previously been brought to the Commission staff for informal resolution.

The suggested categorization of this proceeding is “adjudicatory”.

OMWD’s mailing address and phone number are as follows

Olivenhain Municipal Water District  
1966 Olivenhain Road  
Encinitas, CA 92024  
Tel: (760) 753-6466

Defendant SDG&E’s mailing address and phone number are as follows:

San Diego Gas & Electric Company  
8330 Century Park Court, CP31-E  
San Diego, CA 92123  
Tel: (800) 336-7343 (Business Customer Service)

OMWD believes that a hearing will be necessary.

OMWD proposes the following schedule for this proceeding:

Prehearing conference	December 12, 2022
Complainants’ Opening Testimony	January 23, 2023
SDG&E’s Response Testimony	February 27, 2023
Complainants’ Rebuttal Testimony	March 27, 2023
Hearing	April 10, 2023
Opening Briefs (Concurrently filed)	May 22, 2023
Response Briefs (Concurrently filed)	June 19, 2023

UTILITY COST MANAGEMENT LLC

By:                     /s/                      
                    Michael Kerkorian

Date: October 26, 2022

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Tel: (559) 261-9230  
Fax: (559) 261-9231

Representative of Complainant



## VERIFICATION

I, **Michael Kerkorian**, am a managing member of Utility Cost Management LLC (UCM), and am authorized to make this verification on its behalf. UCM is the authorized representative of the Complainant in this proceeding. I have read the foregoing complaint and know its contents. I am informed and believe, and on that basis allege, that the matters stated therein are true. This verification is being made by UCM, as representative of the Complainant, in accordance with CPUC Rules of Practice and Procedure. The Complainant is absent from the county in which UCM's office is located (Fresno County).

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on the date indicated below at Fresno, California.

By:                     /s/                      
Michael Kerkorian

Dated: October 26, 2022 7

## PRIVACY NOTICE

This message is to inform you that the Docket Office of the California Public Utilities Commission (CPUC) intends to file the above-referenced Formal Complaint electronically instead of in paper form as it was submitted.

Please note: Whether or not your Formal Complaint is filed in paper form or electronically, Formal Complaints filed with the CPUC become a public record and may be posted on the CPUC's website. Therefore, any information you provide in the Formal Complaint, including but not limited to, your name, address, city, state, zip code, telephone number, E-mail address and the facts of your case may be available on-line for later public viewing.

Having been so advised, the Undersigned hereby consents to the filing of the referenced complaint.

\_\_\_\_\_/s/\_\_\_\_\_  
Signature

\_\_\_\_\_  
October 26, 2022  
Date

\_\_\_\_\_  
Michael Kerkorian  
Print Name